IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL APPLICATION NO. 2035 OF 2007

1. Shri Niteen Suresh Thite,

2. Shri Santosh Ramesh Thite,

3. Shri Sagar Chandrakant Ananddate. ... Applicants.

V/s.

The State of Maharashtra. ... Respondent.

M.S.Mohite with Amit Shete for the applicants.

Y.S.Shinde APP for the State.

CORAM: V.C.DAGA, J.

DATED: 20th July 2007.

P.C.:

. Heard learned counsel for the applicant and learned A.P.P. for the State.

2. The applicants are seeking bail in connection with C.R.No.28/2007 registered with Pandharpur City Police Station, Solapur. The applicants are charged under sections 376(G), 63, 366-A, 109 read with section 34 of Indian Penal Code.

3. The prosecution case is that on 10th February, 2007 at about 6.30 p.m. the prosecutrix left the house to meet her friend, by name Puja Sagar, at her

home. When the prosecutrix arrived at shop of Gandhi, which is situated on the Municipal Council Road, applicant No.1- Niteen arrived there and asked the prosecutrix to sit on his motorcycle pretending to go to nearby garden with a view to spend some time. It is alleged that applicant No.1 also assured her that after spending some time in the garden, he will drop her at her residence.

4. The further case of the prosecutrix is that the prosecutrix believing the applicant No.1- Niteen; accompanied him. One Sagar Ananddate i.e. applicant No.3 also joined them.

5. The prosecutrix, before sitting on the motorcycle, put scarf around her face so that no one shall recognise her. That applicant No.1 instead of driving motorcycle towards garden, proceeded towards the spot of incident. On being asked to stop by the prosecutrix, applicant No.1- Niteen did not stop and proceeded towards the spot of incident. On reaching the spot of incident; he stopped near one hotel (at Vengurla Dhaba) where, according to the prosecutrix, one room was already booked by him in advance. That the prosecutrix was taken to that room and that between 6.30 p.m. to 9.30 p.m., she was raped by applicant No.1 and other co-accused.

6. It is further case of the prosecution that applicant No.1- Niteen dropped her; near her place of residence at about 9.30 p.m. Thereafter, she disclosed this fact to her uncle one Mallikarjun Takane and, thereafter, she went to the police station and lodged F.I.R. dated 10th February, 2007.

7. The investigating officer, after investigation, has filed chargesheet in C.R.No.28/2007. After filing chargesheet, the present applicants moved an application for grant of bail before the learned Sessions Judge, Pandharpur. However, the said application came to be rejected.

8. The applicants finding unsuccessful before the Sessions Court have invoked jurisdiction of this Court under section 438 of Code of Criminal Procedure.

9. I was taken through the medical evidence available on record with respect to the prosecutrix as well as that of applicants. So far as prosecutrix is concerned, admittedly, she is below 14 years of age. During the course of medical examination her mental status was found normal. She was found to be in menses. In general examination of the body surface,

no stain, no foreign material, no injury, no abrasion, no contusions were noticed. No marks were found on her body.

10. So far as medical reports of the applicants are concerned, no body hair were found. No stains either of blood or semen were found on the clothes of any of the applicants. No stains or injury in the pubic region was noticed. The medical reports of all the applicants are identical.

11. In the aforesaid backdrop, except the statement of the prosecutrix there is absolutely no material to charge the present applicants with the offences under sections 376(G), 63, 366-A, 109 read with section 34 of I.P.C. alleged against them.

12. It is beyond imagination that four persons would commit rape on the prosecutrix and would not cause any injury, especially, when she was unwilling. If four persons; one after another; committed rape on her, the stains of semen or blood ought to have been found either on the clothes of the prosecutrix or on the inner clothes of the accused persons. all of them are young boys.

13. The statement of the prosecutrix also does not go hand in hand with the statement of her uncle and aunt. They are at variance. In the circumstances, prima facie; case for bail is made out by the applicants. I am, therefore, inclined to grant bail in favour of the the applicants, subject to the following conditions:

(a) The applicants, arrested in connection with C.R.No.28/2007 registered with Pandharpur City Police Station, Solapur shall be enlarged on bail in the sum of Rs.10,000/- each with one or two local sureties to make up the said amount.

(b) The applicants shall report to the Pandharpur City Police Station once in a week, i.e. on every Friday between 3.00 to 5.00 p.m. till conclusion of the trial.

(c) The order of bail will be given effect only after the applicants furnish to the investigating officer the details about their place of residence and addresses where they

propose to stay after they are enlarged on bail. The applicants will not change their residential address thereafter till the conclusion of trial without prior intimation to the investigating officer.

(d) The applicants shall not directly or indirectly, make any inducement or threat or pressurise any prosecution witnesses and shall not in any manner tamper with the prosecution evidence.

(e) The applicants shall co-operate with the trial Court as well as the investigating agency for disposal of the case. It is needless to mention that breach of any of the conditions by the applicants shall result in cancellation of bail.

(f) It is needless to mention that any observation made in this order shall not be construed as finding or expression on merits by this Court.

8. Application stands disposed of accordingly.

JUDGE